

REMARKS

Claims 1-9, 11-16 and 18-19 are pending in the above-identified patent application. By this Amendment, claims 10 and 17 are canceled and the specification and claims 1, 3, 5-8, 11, 16 and 18-19 are amended. No new matter is added. Reconsideration of the application is respectfully requested in view of the above amendments and the remarks set forth below.

Objection to the Drawings

The Office Action objects to the drawings with the assertion that reference character 8 should be between frames 7 and 8 in Fig. 3A. Applicants have amended Fig. 3A appropriately in the attached "Submission of Formal Drawings." Approval of corrected Fig. 3A is respectfully requested. Also it is asserted that the frame-means with grid marking as recited in claim 10 and the reservoir recited in claim 17 must be shown in the Figures. Claims 10 and 17 have been canceled, rendering moot this aspect of the objection to the drawings.

Objection to the Specification

The Office Action objects to the specification for containing asserted informalities. First, the Office Action asserts that it is improper to describe the invention by inserting claim 19 into the Summary of the Invention. However, Applicant respectfully submits that the terminology "claim 19" is nowhere mentioned in the Summary of the Invention.

Regarding the remainder of the asserted informalities, Applicants have amended the paragraph on page 6, lines 15-22, of the specification and amended claims 11 and 18 to include the Examiner's suggested changes.

Reconsideration and withdrawal of the objection to the specification are respectfully requested.

Objection to the Claims

The Office Action objects to claims 5-8 and 16 for containing asserted informalities. Applicants have amended the claims to include the Examiner's suggested changes. Reconsideration and withdrawal of the objection to the specification are thus respectfully requested.

Section 112, First Paragraph, Rejections

The Office Action separately rejects claims 10 and 17 under 35 U.S.C. 112, first paragraph. The rejections of claims 10 and 17 are rendered moot by the cancellation of these two claims. Reconsideration and withdrawal of the rejections of claim 10 and of claim 17 under 35 U.S.C. 112, first paragraph, are respectfully requested.

Section 112, Second Paragraph, Rejection

The Office Action rejects claims 1-19 under 35 U.S.C. 112, second paragraph, as being indefinite for containing asserted informalities. Applicants believe that this rejection is overcome with the above amendments to claims 3, 5-7, 10 and 19.

Reconsideration and withdrawal of the rejection of claims 1-19 under 35 U.S.C. 112, second paragraph, are respectfully requested.

Section 102 and 103 Rejections

The Office Action rejects claims 1, 2, 6, 7, 9, 11, 13-16, 18 and 19 under 35 U.S.C. 102(b) as being anticipated by Shepel (U.S. Patent No. 4,317,726). The Office Action also rejects claims 1-3, 5-7, 9, 11, and 13-19 under 35 U.S.C. 102(b) as being anticipated by Shepel. The Office Action also claims 4 and 8 under 35 U.S.C. 103(a) as being obvious over Shepel. The Office Action also claims 1-5, 8, 9, 11, and 13-19 under 35 U.S.C. 103(a) as being obvious over Maimon (U.S. Patent No. 5,011,779) in view of Shepel. The Office Action also claims 11, 12, 14 and 18 under 35 U.S.C. 103(a) as being obvious over Shepel or Maimon in view of Shepel and further in view of Kedar et al. (U.S. Patent No. 6,045,325). These rejections are traversed.

Shepel discloses a microbial filter assembly. The Office Action asserts that Shepel discloses a "plurality of reservoirs (20)...[and that each] reservoir has an open end opposite the open with an opening (18) wherein the open end is adapted to receive liquid samples [and it] appears that opening (18) is a capillary opening."

It is respectfully submitted that the Office Action entirely mis-describes the disclosure of Shepel. In particular, it is noted that Shepel nowhere teaches or suggests the inclusion of a "reservoir," as is required by the present claims. Shepel actually teach against a reservoir, stating that "[t]he tapered construction of the inlet ports permits the syringe tip to move close to orifice 18 and eliminates the problems associated with the development of an air space between the filter membrane and the tip of the syringe.

Thus, upon the application of pressure to the sample fluid by depression of the plunger of the syringe, **fluid flows quickly and efficiently** out of the syringe and directly onto and through the filter membrane, **without deposits of any kind forming along the walls of either channel 20 or orifice 18**" (see column 7, lines 37-47, emphasis added).

Additionally, since the orifice 18 must be large enough that fluid is not able to deposit thereon, Shepel actually teaches against a capillary opening since such a necessary large orifice could not act as a capillary opening, as is required by the present claims.

Thus, as elements of the present claims, including a reservoir and a capillary opening, are missing from the teachings of Shepel, and further since Shepel actually teach against a reservoir and a capillary opening, it is respectfully submitted that the presently claimed invention is not anticipated by and would not have been obvious over Shepel.

Maimon, which discloses an apparatus for rapid deposition of test samples on an absorbent support, fails to make up for the deficiencies in Shepel. In particular, Shepel does not teach a reservoir having a capillary opening that touches and contacts a membrane. Maimon only discloses bore-type passages 7 to contain conventional pipette tips 2. The passages are not a reservoir, do not have a capillary opening and do not contact a membrane.

Maimon actually discloses that the "the distance between the tips of the dispensing elements 2 located in the bores 7 and the upper surface of the absorbent assay support is preferably 2 mm" (column 5, lines 30-32). Applicant respectfully notes that at a distance of 2 mm or even less, capillary action will not work to deliver a liquid

sample. For an opening to act as a capillary opening and deliver liquid to an absorbent support, the capillary opening must contact the surface of an absorbent support. By teaching a distance of 2mm, Maimon teaches against the capillary opening that touches and contacts a membrane required by the present claims.

As none of the cited references teach or suggest a reservoir having a capillary opening that contacts a membrane, as is required by the present claims, all of the cited references fail to anticipate and, alone or in any combination, would not have rendered obvious the presently claimed invention.


For at least the above reasons, the presently claimed invention is not anticipated by and would not have been obvious over any of the applied references, alone or in any combination. Thus, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. 102(b) and 103(a).

Conclusion

In view of the above amendments and remarks, Applicant respectfully submits that this application is in condition for allowance. Favorable consideration and prompt allowance of the claims are earnestly solicited. Should the Examiner believe anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

In the event this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. The Commissioner is authorized to charge payment for any additional fees which may be required with respect to this paper to Counsel's Deposit Account 01-2300, referring to client-matter number 108904-0000*. Thus, please charge any fee deficiency or credit any overpayment to Deposit Account No. 01-2300, making reference to Attorney Docket No. 108904-0000*.

Respectfully submitted,



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